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May 5, 1997

Federal Communications Commission
Office of Secretary

VIA COURIER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

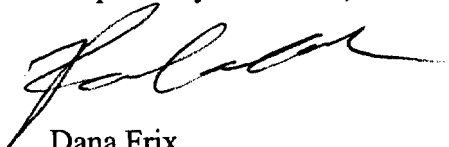
Re: Application for Review of Telco Communications Group, Inc

Dear Mr. Caton:

Enclosed for filing please find an original and four (4) copies of the Application for Review of Telco Communications Group, Inc. on behalf of its operating subsidiaries, pursuant to Section 1.115 of the Commission's Rules, CC Docket No. 96-122. Also enclosed is an extra copy to be stamped and returned.

Please direct any questions you may have regarding this filing to the undersigned of this office.

Respectfully submitted,



Dana Frix
Pamela Arluk

Its Counsel

cc: Attached Service List
Bryan Rachlin
Michael Romano

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 5 1997

Federal Communications Commission
Office of Secretary

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| In the Matter of |) | |
| |) | |
| Implementation of the |) | CC Docket No. 96-128 |
| Pay Telephone Reclassification |) | |
| and Compensation Provisions of the |) | |
| Telecommunications Act of 1996 |) | |

APPLICATION FOR REVIEW
OF TELCO COMMUNICATIONS GROUP, INC.

Telco Communications Group, Inc., on behalf of its operating subsidiaries ("Telco"), pursuant to Section 1.115 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. §1.115, hereby seeks reversal of the Common Carrier Bureau's ("Bureau") Order released April 4, 1997, in the above-referenced docket.¹ The Bureau's Order violates the Commission's Payphone Orders by permitting LECs to receive interim compensation prior to fully complying with the Commission's requirements for implementing its payphone regulatory scheme.

Telco has expressed a strong interest throughout the Commission's efforts to deregulate the payphone marketplace in accordance with Section 276 of the 1996 Telecommunications Act ("1996 Act"). Among other things, Telco has submitted comments to the Commission regarding the comparably efficient interconnection ("CEI") plans filed by Bell Atlantic, NYNEX, Southwestern Bell, U S West, Pacific Bell and Nevada Bell as requested by earlier orders in this docket.² In this

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA-678 (rel. Apr. 4, 1997) ("Waiver Order").

² *See, e.g., Comments of Telco Communications Group on Bell Atlantic's CEI Plan*, CC Docket No. 96-128 (filed Feb. 7, 1997). Comments on the CEI plans filed by Southwestern

latest filing in this docket, Telco raises significant concerns about the recent decision by the Bureau to grant a "limited waiver" to local exchange carriers ("LECs") that permits these LECs to receive a substantial amount of funds under the Commission's interim flat-rate compensation mechanism without complying with the balanced deregulation schedule promulgated in the *Payphone Order*³ and reaffirmed in the Commission's *Reconsideration Order* in this docket.⁴ Specifically, Telco objects to the Bureau's decision in the most recent *Waiver Order* to permit the Regional Bell Operating Companies ("RBOCs") and other LECs to receive flat-rate interim compensation from interexchange carriers ("IXCs") for payphone services starting April 15, 1997, even though the LECs will not have filed federal tariffs complying with the Commission's orders in this docket until one month later.⁵ By permitting LECs to collect substantial revenues from IXCs such as Telco prior to any federal review of their compliance with the Commission's carefully designed payphone rules, the Bureau viscerates the Commission's attempt -- and the Congressional mandate -- to "promote competition among payphone service providers."⁶ Accordingly, the Commission must reverse the Bureau's decision by prohibiting the LECs from receiving interim compensation until their federal tariffs are filed and

Bell, NYNEX and U S West were also filed on February 7, 1997. Comments on the CEI plan of Pacific Bell and Nevada Bell were filed on February 12, 1997.

³ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("*Payphone Order*").

⁴ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("*Reconsideration Order*"), at ¶131.

⁵ *Waiver Order*, at ¶ 21.

⁶ 47 U.S.C. § 276(b)(1) (1996); *September 20 Order*, at ¶2.

effective.

I. THE COMMISSION RULED THAT EACH LEC MUST FULLY COMPLY WITH THE COMMISSION'S RECLASSIFICATION REQUIREMENTS BEFORE RECEIVING COMPENSATION UNDER THE COMMISSION'S FLAT-RATE MECHANISM

Petitions from various RBOCs in response to the *Payphone Order* asked the Commission to allow all LECs to receive compensation under the interim flat-rate compensation mechanism. In permitting the LECs to participate in the flat-rate compensation mechanism in the *Reconsideration Order*, the Commission explicitly warned, "We must be cautious, however, to ensure that LECs comply with the requirements set forth in the [*Payphone Order*]."⁷ Among the six significant requirements noted by the Commission, each LEC would be required to have *effective* interstate tariffs removing certain subsidies and excessive costs by April 15, 1997.⁸ The Commission required the LECs to file these tariffs to ensure that the LECs would not simultaneously be receiving anticompetitive subsidies *and compensation from IXCs*.⁹

By allowing LECs to recover interim compensation prior to compliance with this part of the Commission's carefully established competitive safeguards, the Bureau has flatly rejected the Commission's admonition to remain "cautious" in permitting RBOCs and other LECs to receive compensation like other payphone service providers ("PSPs"). Given the Commission's own wording in this paragraph of the *Reconsideration Order*, the Commission surely must have delegated oversight of compliance with these requirements to the Bureau out of a sense of cautious administration, not

⁷ *Reconsideration Order*, at ¶131.

⁸ *Id.*

⁹ *See Payphone Order*, at ¶ 127.

so that LECs could receive double compensation for their payphone services. Again, the Commission's own choice of terms reveals its intent: "LECs will be eligible for compensation like other PSPs when they have *completed the requirements* for implementing our payphone regulatory scheme"¹⁰ The Bureau's action in the *Waiver Order* thus contradicts the Commission's own language, and must be reversed in light of the Commission's clear intent to permit the RBOCs and other LECs to receive substantial flat-rate compensation amounts from IXCs such as Telco only after it had been determined that their tariffs do not contain any subsidies or reflect any excessive costs.¹¹

In its *Payphone Order*, the Commission clearly noted the anticompetitive ramifications of permitting the RBOCs and other LECs to receive funds under the interim flat-rate compensation mechanism before the reclassification requirements have been met. In that Order, the Commission commented:

LEC participation both in providing payphones to the public and also providing the underlying tariffed payphone services to independent PSPs may give LECs the incentive and the potential ability to unfairly act to the detriment of their PSP competitors and to act in other anticompetitive ways against PSPs. However, *by implementing safeguards*, we intend to *ensure* that LECs cooperate fully in the provision of any necessary payphone services and do not otherwise restrain competition, as long as LECs remain the monopoly providers of these services.¹²

The Commission must reassert its concerns about anticompetitive behavior, and its

¹⁰ *Id.* (emphasis added).

¹¹ From April 15 to November 7, 1997, Telco estimates that it will be responsible for paying **almost \$2 million** if the approximately 1.5 million LEC-owned payphones are included in the flat-rate compensation mechanism. Absent a waiver to compensate payphone owners on a per-call basis (Telco has filed such a waiver), Telco's per month responsibility would be approximately \$271,571.49.

¹² *September 20 Order*, at ¶14 (emphasis added).

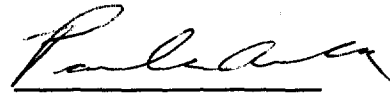
corresponding commitment to competitive safeguards, by reversing the Bureau's decision to permit the LECs to participate in the compensation scheme prior to their compliance with a significant portion of the Commission's safeguards.

In short, the Bureau's decision would allow the LECs to receive all of the benefits of the Commission's compensation mechanism without satisfying all of the Commission's requirements for receiving that compensation. Such a decision flies in the face of the cautious tone set by the Commission in its prior Orders in this docket, and permits RBOCs and other LECs to collect substantial sums of money from IXCs such as Telco without having effective interstate tariffs that reflect a truly competitive payphone marketplace.

II. CONCLUSION

For the foregoing reasons, Telco urges the Commission to reverse the Bureau's decision to allow the LECs to receive interim compensation from the interexchange carriers prior to complying with the Commission's interstate payphone tariff reclassification requirements. As demonstrated above, the Bureau's decision does not comport with the Commission's own statements on this issue nor the policy rationales underlying the Commission's Orders in this docket. The Commission must not permit RBOCs and other LECs to receive funds under the interim flat-rate compensation mechanism until these carriers have effective interstate tariffs that comply with the Commission's requirements set forth in this docket.

Respectfully submitted,



Dana Frix
Pamela S. Arluk
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for
TELCO COMMUNICATIONS GROUP,
INC. AND ITS OPERATING
SUBSIDIARIES

Dated: May 5, 1997

CERTIFICATE OF SERVICE

I, Jeannine Allen, hereby certify that on this 5th day of May, 1997, a copy of the foregoing **Application for Review of Telco Communications Group, Inc., CC Docket No. 96-128**, was served on each of the following parties via courier, or by first-class mail, postage prepaid (as denoted by asterisk):

Regina M. Keeney
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Mary Beth Richards
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Janice M. Myles
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

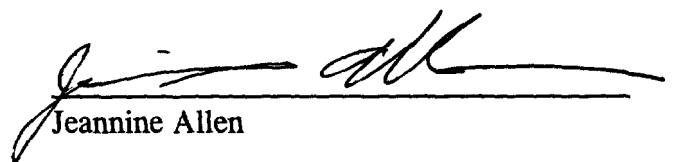
International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037

Michael K. Kellogg*
Jeffrey A. Lamken
Kevin J. Cameron
Kellog, Huber, Hanson, Todd & Evans
1301 K Street, N.W., Suite 3000W
Washington, D.C. 20005

Mark C. Rosenblum*
Ava B. Kleinman
Seth S. Gross
AT&T Corp.
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Mary J. Sisak*
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Albert H. Kramer*
Robert F. Aldridch
David M. Janas
Dickstein, Shapiro, Morin &
Oshinsky, LLP
2101 L Street, N.W., Suite 800
Washington, D.C. 20027


Jeannine Allen